



FH

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MPA/166805

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 19, 2015, under Wis. Stat. §49.45(5), and Wis. Admin. Code §HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (DHCAA) in regard to Medical Assistance (MA), a telephonic hearing was held on July 14, 2015. The record was held open post-hearing for 20 days to allow the petitioner to provide additional information, which was received and forwarded to the Office of Inspector General (OIG) for review and comment, which was also received.

The issue for determination is whether the DHCAA/OIG correctly denied petitioner's prior authorization (PA) request because it did not support the medical necessity for the requested occupational therapy services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: written submittal of: Mary Chucka, OTR  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 272  
P.O. Box 309  
Madison, WI 53707-0309

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner is a resident of Milwaukee County. At the time of the PA request he was 7 years old and certified as eligible for MA.
2. Petitioner is diagnosed with Down's Syndrome, Developmental Delay, Epilepsy, Hypothyroidism and Autistic Disorder.
3. On April 15, 2015 the petitioner's private Occupational Therapist (OT) at HealthReach submitted a PA request to the DHCAA/OIG for outpatient OT services twice weekly for 26 weeks to start April 8, 2015.
4. Petitioner receives OT through his school district.
5. On May 29, 2015 the DHCAA/OIG issued a notice to petitioner denying the PA request because it concluded that the OT regimen requested was not medically necessary under Wisconsin's MA rules.

### **DISCUSSION**

OT is covered by MA under Wis. Adm. Code, §DHS 107.17. Generally OT is covered without need for prior authorization for 35 treatment days, per spell of illness. Wis. Adm. Code, §DHS 107.17(2)(b). After that, prior authorization for additional treatment is necessary. If prior authorization is requested, it is the provider's responsibility to justify the need for the service. Wis. Adm. Code, §DHS 107.02(3)(d)6 (emphasis added). If the person receives therapy in school or from another private therapist, there must be documentation of why the additional therapy is needed and coordination between the therapists. Prior Authorization Guidelines Manual, p. 112.001.02, nos. 2 and 3.

In reviewing a PA, request the DHCAA/OIG must consider the general PA criteria found at §DHS 107.02(3) and the definition of "medical necessity" found at §DHS 101.03(96m). §DHS 101.03(96m) defines medical necessity in the following pertinent provisions:

"Medically necessary" means a medical assistance service under ch. DHS 107 that is:

- (a) Required to prevent, identify or treat a recipient's illness, injury, or disability; and
- (b) Meets the following standards:
  1. Is consistent with the recipient's symptoms or with prevention, diagnosis or treatment of the recipient's illness, injury or disability;
  2. Is provided consistent with standards of acceptable quality of care applicable to the type of service, the type of provider and the setting in which the service is provided;
  3. Is appropriate with regard to generally accepted standards of medical practice;
  4. Is not medically contraindicated with regard to the recipient's diagnoses, the recipient's symptoms or other medically necessary services being provided to the recipient;
  5. Is of proven medical value or usefulness and, consistent with s. DHS 107.035, is not experimental in nature;
  6. Is not duplicative with respect to other services being provided to the recipient;
  7. Is not solely for the convenience of the recipient, the recipient's family or a provider;
  8. With respect to prior authorization of a service and to other prospective coverage determinations made by the department, is cost-effective compared to an alternative medically necessary service which is reasonably accessible to the recipient; and
  9. Is the most appropriate supply or level of service that can safely and effectively be provided to the recipient.

The DHCAA/OIG interprets the code provisions to mean that a person must continue to improve for therapy to continue, specifically to increase the ability to do activities of daily living. In addition, at some point the therapy program should be carried over to the home, without the need for professional intervention.

In this case the DHCAA/OIG denied the request because it could not determine from the information submitted by petitioner's provider that there were objective measurements of his limitations, measured in consistent units over the course of previous OT treatment or with a current evaluation, so as to show the need for continued weekly private OT. It is true that a therapist or physician may assert that a skilled level of intervention is needed, but this must be supported by clinical information. Therapy services are then considered required when the problems identified can be reasonably associated with the presenting concern and the proposed services are reasonably expected to resolve the deficits. In determining whether the therapy meets the medically necessary criteria, the provider must perform tests that consistently and accurately measure performance. If the therapy does not meet these criteria, it fails the medically necessary test because it is not consistent with the recipient's symptoms or with treatment of the recipient's disability.

I have reviewed the petitioner's evidence carefully and in detail. I can only conclude that the DHCAA/OIG's denial of the requested OT regimen was correct. The provider did not adequately document the medical need for the requested OT. The measurements are not stated objectively or do not show any significant changes so as to show a requirement for the requested weekly sessions by a skilled therapist, to show that previous OT has been effective, or that regression has occurred since OT was discontinued. Further, it does not show how the direct influence of the outpatient therapy service has caused any improvement. In other words, any changes may have been a result of maturation, or repetition of a task over the course of daily routine as supervised or facilitated by all persons involved with an individual. This measurement does not require the use of standardized testing, but rather an objective measure from which progression or regression can be seen. Further, the private PT may well indeed be qualified to assess a client by using the terms "decreased" or "impaired", however, when requesting PA, the provider is required to measure deficits objectively so that a baseline of a client's functional limitations are identified, a plan of care can be derived, and progress, if any, can be shown to authorize the therapy. The Prior Authorization/Therapy Attachment (PA/TA) Completion Instructions recite this requirement several times. See PA/TA Completion Instructions, available online at <https://www.dhs.wisconsin.gov/forms/fl/fl1008a.pdf>. I note that the Instructions specifically state in Section VI the requirement for using specific, measurable, and objective terms, and terms that are not considered as such, along with examples that are acceptable. This is not meant to diminish the challenges petitioner and his family face, but rather to show that the provider has not yet objectively shown the measurements needed to continue services.

The petitioner may file a new PA Request at any time in the future, and submit new clinical documentation designed to establish these clinical facts and observations for the DHCAA/OIG to then review.

While petitioner may believe this to be unfair, it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on constitutional or equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The DHCAA/OIG correctly denied petitioner's PA request because it did not support the medical necessity for the requested occupational therapy services.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

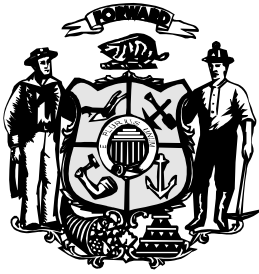
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 2nd day of September, 2015

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\sKelly Cochran  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 2, 2015.

Division of Health Care Access and Accountability